IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

Bail Appl..No. 4043 of 2007()

CRMP.1992/2007 of D.C. & SESSIONS COURT, ERNAKULAM
CRIME NO.296/07 of OTTAPALAM POLICE STATION

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: PETITIONERS/ACCUSED

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1. K.V.NAZEER @ KANI, S/O.KUNHIMOIDU,
AGED 29 YEARS, KALLIVALAPPIL VEEDU, PALAPPURAM,
OTTAPALAM TALUK, PALAKKAD DISTRICT.

2. SALEEM, S/O.MUHAMMED, AGED 20 YEARS,
THOTTATHODI VEEDU, PALAPPURAM, OTTAPALAM TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, REPRESENTING THE S.I.OF POLICE,
OTTAPALAM POLICE STATION.

BY PUBLIC PROSECUTOR SRI.P.N.SUKUMARAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 05/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.4043 of 2007

Dated this the 5th day of July, 2007

ORDER

Application for anticipatory bail. Petitioners are accused 1 and 2. Altogether there are 3 accused persons. The crux of the allegations against the petitioners is that they had trespassed into the house of the defacto complainant and attacked the defacto complainant with sticks on account of prior animosity. The children of the defacto complainant intervened and they also allegedly sustained hurt. The alleged occurrence took place on 28.05.2007. Crime has been registered, inter alia, under Sections 452 and 324 I.P.C. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners raises various contentions. The incident did not take place inside the house, but took place in the courtyard of the house. In these circumstances, exaggerated and false allegations are raised against the petitioners to ensure that they would not get bail and will be obliged to remain in custody. The motive alleged is trivial - of trespass by a goat and destroying of the fence.

3. The learned counsel for the petitioners prays that anticipatory bail may, in these circumstances, be granted to the

petitioners. The application is opposed. There are no circumstances justifying the invocation of the jurisdiction under Section 438 Cr.P.C, submits the learned Public Prosecutor.

4. I find merit in the opposition by the learned Public Prosecutor. This, I am satisfied, is a fit case, where the petitioners must resort to the ordinary and normal procedure of appearing before the Investigating Officer or the learned Magistrate having jurisdiction. They must then seek regular bail in the ordinary course. I have no reason to assume that the learned Magistrate would not consider their applications for bail on merits, in accordance with law and expeditiously.

5. In the result, this bail application is, dismissed. Needless to say, if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

(R.BASANT, JUDGE)

rtr/-